



November 12, 1999

Mr. Ric Gonzalez  
Neiman & Barnes, L.L.P.  
P.O. Box 777  
Lewisville, Texas 75067

OR99-3226

Dear Mr. Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130731.

The City of Lewisville (the "city"), which you represent, received a request for "any and all information regarding complaint issued for 253 E. FM 3040 including original complaint and name of complainant." You indicate you have released some information responsive to the request. You have provided for our review the information you have released, from which you have redacted any information that identifies the complainant. You have also provided for our *in camera* review the complete information. You assert the redacted information is excepted from public disclosure under section 552.101 of the Government Code. We have reviewed the information you have submitted and considered the exception you assert.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You state that release of the identity of the complainant "would jeopardize the anonymity of citizens who voluntarily communicate their knowledge of the commission of offenses." Thus we assume you are specifically referring to the informer's privilege. Texas courts long have recognized the informer's privilege, *see Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928), and it is a well-established exception under the Public Information Act. Open Records Decision No. 549 at 4 (1990). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

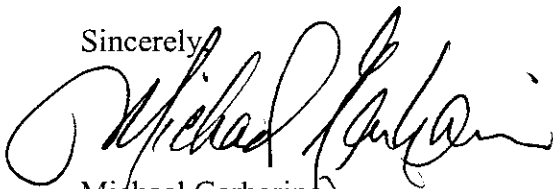
What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law enforcement officials and, by preserving their anonymity, encourages them to perform that obligation.

Although the informer's privilege aspect of section 552.101 ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 285 at 1 (1981), 279 at 1-2 (1981); *see also* Open Records Decision No. 208 at 1-2 (1978). This may include enforcement of quasi-criminal civil laws. *See* Open Records Decision Nos. 515 at 3 (1988), 391 at 3 (1983). The privilege excepts the informer's statement itself only to the extent necessary to protect the informer's identity. Open Records Decision No. 549 at 5 (1990). However, once the identity of the informer is known to the subject of the communication, the exception is no longer applicable. Open Records Decision No. 202 at 2 (1978). For information to come under the protection of the informer's privilege, the information must relate to a violation of a civil or criminal statute. *See* Open Records Decision Nos. 515 at 2-5 (1988), 391 (1983). Finally, since the informer's privilege facet of section 552.101 of the Government Code serves to protect the flow of information to a governmental body and does not serve to protect a third person, this privilege, unlike other section 552.101 claims, may be waived by the governmental body. Open Records Decision No. 549 (1990).

The information you have provided indicates the city received a report of an alleged violation of a city ordinance that is within the purview of the city's enforcement authority. You have not stated whether the informer's identity is known to the requestor, but we assume from the fact that the requestor asks for the name of the complainant, that the informer's identity is not known to the requestor. We accordingly conclude that the information you have redacted may be withheld under the informer's privilege as incorporated by section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael Garbarino", written in a cursive style.

Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/ch

Ref: ID# 130731

Encl. Submitted documents

cc: Ms. Katherine Lippi  
548 Stonegate Drive  
Paradise, Texas 76073-3510  
(w/o enclosures)